

PLAT INST. # 2000-0080569

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PIKE TOWNSHIP  
ASSESSOR

**DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR THE EAGLE CREEK MANOR  
PLANNED COMMUNITY**

and the By-laws for the  
EAGLE CREEK MANOR HOMEOWNERS ASSOCIATION, INC.  
An Indiana Non-Profit Corporation



M/I Schottenstein Homes, Inc.  
Indianapolis Division  
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**EAGLE CREEK MANOR DECLARATION**  
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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE EAGLE CREEK MANOR PLANNED COMMUNITY**

and the By-laws for the  
**EAGLE CREEK MANOR HOMEOWNERS ASSOCIATION, INC.**  
An Indiana Non-Profit Corporation

This Declaration is made by M/I Schottenstein Homes, Inc., which shall hereinafter be referred to as "Developer" or as "Declarant". The real estate which is the subject of this Declaration is located in Marion County, Indiana and is more particularly described in "Exhibit 1" attached hereto and incorporated herein (hereinafter referred to as the "Real Estate"). Eagle Creek Manor shall consist of 36 lots, numbered Lots 1 through 36, plus Blocks "A" and "B", together with streets, easements and public ways shown on the plat.

Declarant subjects the Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, as provided in this Declaration, for the benefit of the Eagle Creek Manor Community and each Lot Owner, for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

Declarant has incorporated the Eagle Creek Manor Homeowners Association, Inc., an Indiana non-profit corporation which shall own, maintain and administer the common areas located within the Real Estate, administer and enforce the covenants and restrictions contained in this Declaration, collect and disburse the funds of the Association, and promote the best interests of the Community on behalf of the owners of the Real Estate.

**NOTICE:** Prior to making application for an improvement location permit from the appropriate governmental agency for the construction of a residence or other structure, site plans, landscaping plans and building plans shall have been approved in writing by the Eagle Creek Manor Architectural Control Committee as defined in Article 11 of this Declaration. Such approval shall include but not be limited to: building design, color and location, private drives, tree preservation, and proposed landscaping and fencing, all in accordance with the requirements of the Eagle Creek Manor Design Guidelines.

**ARTICLE 1**

**DECLARATION OF RESTRICTIONS AND STATEMENT OF PROPERTY RIGHTS,  
MEMBERSHIP, FUNCTIONS OF THE CORPORATION, DEFINITIONS**

**SECTION 1.1 Declaration.** Declarant hereby expressly declares that the Real Estate shall be held, transferred and occupied subject to these Restrictions. The Lot Owners and all other Persons or entities, by acceptance of a deed, a lease or other form of conveyance, and any successor owner, lessee or occupant of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract or lease agreement and undertaken such occupancy subject to this Declaration. Each Owner, for itself and its heirs, personal representatives, successors and assigns, covenants--to the Declarant, the Architectural Control Committee, the Association, and the other present and future Owners of each of the Lots--and agrees to keep, observe and comply with the terms and provisions of this Declaration.

**SECTION 1.2 Property Rights.** Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Areas, subject to this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying the common areas to the Association and easement rights in favor of Developer and the Association to extend storm sewers, sanitary sewers and other utilities across any of the common areas or public ways.

**SECTION 1.3 Functions.** The Corporation has been formed for the purpose of maintaining the value and appearance of the Eagle Creek Manor Community; providing for the maintenance, repair, replacement, administration, operation

and ownership of the Common Areas; enactment, administration, and enforcement of rules and regulations for use of the lots, easements and common areas of the Community; enforcement of Architectural Design and Environmental Control within the Community and of the Covenants for the mutual benefit of all Owners; to pay taxes assessed against and payable with respect to the Common Areas; to pay any other necessary expenses and costs in connection with the Association; and to perform such other functions as may be designated under this Declaration.

**SECTION 1.4 Membership in Corporation.** Each Owner of a Lot shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as such ownership ceases. Membership shall terminate when such Owner ceases to be an Owner and will be transferred to the new Owner of such Lot.

**SECTION 1.5 Definitions.** The definitions applicable to this Declaration are as follows:

A. "Architectural Control Committee" is a Standing Committee of the Eagle Creek Manor Board having authority and responsibility for approving all alterations, additions, improvements or changes to any lot or to any house (which is visible from the exterior), as further defined and specified in Article 11 of this Declaration.

B. "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Eagle Creek Manor Homeowners Association, Inc., as hereinafter defined.

C. "Common Area" means the ground designated as a "Block" or as "Common Area" upon each plat within the Eagle Creek Manor Community. The Common Areas of this Community shall be subject to easements for drainage and utilities, as further described and defined herein.

D. "Common Expense" means expenses for administration of the Association and for the upkeep, maintenance, repair and replacement of the Common Areas, and all sums lawfully assessed against Owners and occupants of the Lots. Common Expenses shall include, but not be limited to:

- 1) The costs of maintaining and/or replacing any common areas or structures, improvements or facilities within the common areas;
- 2) All expenses of purchasing, installing and maintaining the entryways to the Community, including identification signs, lighting, plantings and landscaping;
- 3) All expenses of maintaining any medians in the public streets within the Community;
- 4) Expenses of maintaining the lakes and ponds within the Community, and any fountain or water circulation system within any lake or pond, however, nothing in this Declaration shall require the Developer to install a fountain or water circulation system or, if a fountain or water circulation system is installed, to install any particular type or design;
- 5) Lease payments for Community street and entryway lighting, or principal and interest if financed through a loan in the name of the Association, and electricity, repair and maintenance expenses thereon, whether through a public or private utility company or through a private leasing company;
- 6) Snow removal, if the Board of Directors determines that the Association should privately contract for snow removal for the streets and common areas of the Community;
- 7) Trash removal, if the Board of Directors determines that trash removal should be coordinated and paid for as a Community expense;
- 8) Spraying or treatment for insects, if the Board of Directors determines that the Association should provide this service;
- 9) Costs of enforcing the rules and regulations governing the Community, including those contained in this Declaration and rules and regulations established by the Association; and
- 10) Reasonable allowances for shortfall of funds arising from late payment or non-payment of assessments, for general overruns in budget categories, and for miscellaneous expenses not budgeted under any specific category.

- E. "Community" means the Eagle Creek Manor Subdivision in Marion County, Indiana, as defined in Exhibit "1".
- F. "Corporation" means the Eagle Creek Manor Homeowners Association, Inc., its successors and assigns, a non-profit corporation, whose members shall be the Owners of Lots in the Eagle Creek Manor Community. The terms "Corporation" and "Association" may be used interchangeably to refer to the Eagle Creek Manor Homeowners Association, Inc.
- G. "Declarant" means M/I Schottenstein Homes, Inc., or its successors and assigns, as developer of the Eagle Creek Manor Community. The terms "Declarant" and "Developer" may be used interchangeably.
- H. "Lake" or "Pond" shall mean a water retention pond, the primary purpose of which is to accommodate storm water from the Eagle Creek Manor Community and surrounding property. The terms "lake" and "pond" may be used interchangeably herein. Use of any lake or pond shall be prohibited or limited as specified herein or as determined by the Eagle Creek Manor Board.
- I. "Lot" means each Lot of a recorded plat for the Eagle Creek Manor Community.
- J. "Mortgagee" means the holder of a first mortgage lien on a Lot.
- K. "Owner" or "Lot Owner" means a person, corporation, partnership, association, trust or other legal entity, or any combination thereof, owning the fee simple title to a Lot.

## ARTICLE 2 PLAT COVENANTS

**SECTION 2.1 Easements.** Lots are subject to the following: Drainage Easements, Utility Easements, Sanitary Sewer Easements and Landscape Easements either separately or in combination, as shown on the Plat, which easements are reserved for the use of the Declarant, the Association, public or private utility companies, and governmental agencies, as follows:

"Drainage Easements" are created as shown on the Plat to provide paths and courses for area and local storm drainage, either over land or in adequate underground conduit, to serve the needs of the Community and adjoining ground and/or the public or private drainage system. Under no circumstances shall drainage easements be blocked in any manner by any construction or any improvement, nor shall any grading restrict the water flow in any manner, without the prior approval of the Architectural Control Committee and the governmental authority having jurisdiction over drainage. Drainage Easements are subject to maintenance, construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the Declarant.

"Utility Easements" are hereby created as shown on the Plat for the use of public or private utility companies and cable television companies, not including transportation companies, for the installation, maintenance, and replacement of pipes, mains, ducts and cable or other related utility structures, as well as for the uses specified for sewer easements. No above ground utilities may be installed without the prior written consent of the Architectural Control Committee.

"Sanitary Sewer Easements" are hereby created as shown on the Plat, either specifically designated as Sewer Easements or designated generally as Utility Easements, for the use of the Utility, public or private, having jurisdiction over the sanitary waste disposal system designated to serve Eagle Creek Manor. All designated Utility Easements shall also include Sewer Easements.

"Landscape Easements" are hereby reserved and created over and across Lots as shown on the Plat, within which landscaping, earth



mounds, screening material, fencing, walls, neighborhood and community identification signs, directories, lighting, irrigation systems and other improvements may be constructed and maintained by the Developer or the Association to provide landscape design continuity and ensure attractive and aesthetically pleasing entryways into the Subdivision. Within Landscape Easements, the Developer and the Association shall have the right to install, inspect, maintain, reconstruct and remove such landscape improvements as described herein. Without limiting the generality of the foregoing, the Landscape Easements may include sidewalks, walking trails and paths. Owners of lots shall have the right to fully use and enjoy their own lot, except for such use as may impair, impede, or interfere with the exercise by the Developer or Association of the landscaping and other rights granted herein. Owners of lots shall not construct, nor permit to be constructed any structure or obstruction on or over any part of a lot or interfere with the Developer's or Association's ability to use or gain access to the lot for purposes permitted by this Landscape Easement, without the prior written approval of the Developer or the Association.

**Nothing in this Declaration shall be construed to be a representation that the Developer will install entry walls, identification signs, lighting, irrigation systems or other improvements in the entry ways or common areas.**

The Developer, the Association and any other Utility for whose use the Easement areas are created and reserved shall have a right to go on any lot temporarily to the extent reasonably necessary for the exercise of the easement rights granted by this paragraph. Utilities and others using these easements shall be required to repair and correct any damage caused by their ingress, egress, inspection, installation, replacement, repairing and maintenance of utilities. Both the Declarant and the Association shall have the authority, including a power of attorney coupled with an interest, from each Owner within the Eagle Creek Manor Community to grant additional utility easements, which may traverse the property, except within the boundaries of any Lot sold to an Owner. No permanent structures shall be erected or maintained upon Drainage, Utility or Sewer Easements by any Owner without the prior approval of the Architectural Control Committee.

**SECTION 2.2 Drainage Plan.** It shall be the responsibility of the owner of any Lot to comply at all times with the provisions of the drainage plan as approved by the City of Indianapolis and the requirements of all drainage permits for this Community.

**It shall also be the duty of the Owner of every Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair.**

In the event that the Owner does not comply with the drainage plan or does not maintain the storm drainage ditch or swale upon their Lot, or any portion of a drainage pond upon their Lot, after written notice and thirty days notice to correct, the Association shall have an easement to come upon such Owner's property to make any necessary corrections or repairs, and the Association shall be entitled to reimbursement for its costs and shall have a lien upon such Owner's property therefor, collectable as provided in Section 12.7 of this Declaration. In the event of an emergency, the thirty day notice requirement shall not be required, but the Association shall give the Owner such notice as is practical under the circumstances.

**SECTION 2.3 Dedication of Streets.** The rights-of-way of the streets as shown on the plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject however to a

reservation of ingress-egress for the maintenance to medians in the Community and also subject to easements as provided in Section 2.1.

**SECTION 2.4 Building Location and Size.** All building locations must comply with the zoning ordinances and zoning commitments for this Community. Subject to other provisions contained herein and on the plat, no building or structure shall be erected or maintained between the setback lines and the property lines of each lot. The owners of all lots shall be required to submit a drainage plan, including a minimum building elevation, to the governmental agency which issues building permits. The minimum pad or building elevation as so approved by the Architectural Control Committee and the governmental agency shall constitute the minimum elevation for all buildings on said lot.

Each one story residence shall be not less than one thousand two hundred (1,200) square feet of finished and livable floor area, exclusive of basements, open porches and garages, and each multiple story structure shall be not less than one thousand two hundred (1,200) square feet in the aggregate with not less than eight hundred (800) square feet on the main floor, of finished and livable floor area, exclusive of basements, open porches and garages. The Design Guidelines may also specify the minimum square footage requirements for the first floor of any multiple story residence.

**SECTION 2.5 Garages.** Each residence shall have an attached garage of a size to accommodate at least two cars. No garage may be converted to a livable space without prior approval of the Architectural Control Committee and the construction of another attached garage.

**SECTION 2.6 Driveways.** Each driveway in this Community shall be of concrete or asphalt material, and no additional parking shall be permitted on a Lot other than the existing driveway, except with the prior approval of the Architectural Control Committee. No Lot may have a driveway on more than one street.

**SECTION 2.7 Temporary Structures.** No trailer, shack, tent, boat, garage or outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence. With the consent of the Declarant, a builder may have a temporary structure during the construction of a residential building on the property, which temporary construction building or trailer shall be promptly removed upon completion of construction of the building.

**SECTION 2.8 Limitation on Vehicles.** No inoperative or unlicensed vehicle shall be parked or repaired anywhere within the Community, including on any Lot or on the driveway thereof. No camper, trailer, mobile home, boat, truck or school bus may be parked in the Community, including on any Lot or on the driveway thereof, except:

- a. Personal automobiles, vans and pick-up trucks (not larger than 3/4 ton) may, subject to rules and regulations established by the Eagle Creek Manor Board of Directors, be parked on a private driveway, and
- b. A camper, trailer, mobile home, or boat may be stored in an enclosed attached garage of average residential proportions, and
- c. The Eagle Creek Manor Board of Directors may establish rules prohibiting or regulating parking on the public streets within the Community.

**SECTION 2.9 Limitations Regarding Trash.** Garbage and trash shall be kept in approved containers, kept in a clean and sanitary condition, and kept in a location which is not visible from the street, except on collection day or the evening before collection day. No Lot, nor any of the Common Areas, shall be used or maintained as a dumping ground for rubbish or other waste materials and trash shall be regularly removed from the Property.

**SECTION 2.10 Intersection Visibility.** No fence, wall, hedge, shrub or planting which obstructs sight lines at elevations between two (2) and nine (9) feet above the street, shall be placed or permitted to remain on any

corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of the sight line.

### ARTICLE 3

#### OWNERSHIP AND USE OF THE COMMON AREAS

**SECTION 3.1 Ownership.** The Common Area shall be owned by the Corporation and shall be held for the use and enjoyment of the Members, which right shall pass with title to every Lot, subject to the provisions of this Declaration. Once the Common Area has been deeded to the Corporation, it may not be mortgaged or conveyed without the consent of at least two thirds of the Owners (excluding the Developer). Also, as long as Class B membership exists, the Common Area may not be mortgaged or conveyed without the prior written approval of FHA/VA, and, as long as the Developer owns any real estate in the Eagle Creek Manor Community, without the prior written approval of the Developer. The common area in each section of the Eagle Creek Manor Community shall be deeded to the Corporation, free and clear of all encumbrances, at the time that the plat is recorded.

**SECTION 3.2 Easement for Association.** An easement is granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Areas and Easements to perform its duties and, if necessary, to perform the maintenance responsibilities under Section 10.3.

**SECTION 3.3 Water Retention Lakes and Ponds.** One or more water retention areas which may be identified as a lake or which may not be shown but are located within a "Block", shall be a part of the Common Area of the Association. Such Retention Lakes shall be for the purpose of accepting and storing storm water and drainage from the Eagle Creek Manor Community and surrounding areas. Neither the Declarant nor the Association shall be responsible for assuring or maintaining any minimum or maximum level of water in such areas.

The Association, through its Board of Directors, shall be responsible for maintaining any portion of the banks of each lake which are not part of a private lot, and shall maintain the lakes to such degree as it determines is necessary and appropriate and shall control access and use of the lakes. Since the primary purpose of the lakes and ponds is to accept and hold the storm water drainage of the entire Community, all expenses relating to the lakes and ponds will be a common expense.

**SECTION 3.4 Street Lighting.** The Declarant may, but shall not be required to, erect street lights in the entrances, in any landscape, or utility easement, in any intersection, or along any street within the Eagle Creek Manor Community. Street lights may be purchased, leased from a private contractor or may be provided by the electric utility company serving the Community. Lease payments or payments to the electric utility company and all maintenance and repair costs shall be expenses of the Eagle Creek Manor Homeowners Association.

**SECTION 3.5 Non-Liability of Declarant/Builder.** Neither the Declarant nor the Builder shall have any liability to an Owner or to any other Person with respect to erosion of a Lot; with respect to loss or absence of water in any lake or pond; or for excessive water tables causing problems to the basements or foundations of any residence or other building or the loss of any usable yard area. Drainage and erosion control shall be the responsibility of

the Owner. Neither the Declarant nor any Builder shall have any duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant and or Builder in writing, and no duty of, or warranty by, Declarant or any Builder shall be implied by or inferred from any term or provision of this Declaration.

#### ARTICLE 4 CLASSES OF MEMBERSHIP

**SECTION 4.1 Voting Rights.** The Corporation shall have two (2) classes of membership. Class A members shall be all Owners of Lots in the Eagle Creek Manor Community other than the Declarant or a Builder authorized by the Declarant.

The Declarant, and any Builder authorized by the Declarant, shall be a Class B member for each Lot titled in its name or in the name of the fee owner and for each lot within the Community.

**SECTION 4.2 Class A Members.** Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner. When more than one person constitutes the Owner of a Lot, all such persons shall be Members of the Corporation, but they shall cumulatively have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine. No vote may be divided.

**SECTION 4.3 Class B Member.** The Class B Member shall have three (3) votes for each Lot of which it is the Owner.

#### ARTICLE 5 INITIAL MANAGEMENT AND CONTROL BY DEVELOPER

**SECTION 5.1 Definition of "Authority Transfer Date".** Class B membership shall terminate and be converted to Class A membership (the "Authority Transfer Date"), upon the happening of the earliest of the following:

- (a) when the total of all Class A votes exceed the total of all Class B votes; or
- (b) June 30, 2010; or
- (c) when, in its discretion, the Declarant so determines and provides sixty days notice to the members.

**SECTION 5.2 Prior to the Authority Transfer Date.** Prior to the Authority Transfer Date, the Declarant shall appoint all members to the Corporation's Board of Directors and shall have full authority to establish rules and regulations for the Corporation and for the Community. Directors appointed by the Declarant shall serve at the will of the Declarant and shall be considered Owners of the Corporation only for the purpose of serving on the Board.

The Board of Directors, prior to the Authority Transfer Date, shall not be required to hold Meetings, and if Meetings are held, they shall not be required to be held in public, and notice to other Owners shall not be required. In addition, prior to the Authority Transfer Date, the Board of Directors shall not be required to seek owner approval of the budget or the annual assessments.

**SECTION 5.3 Assessments.** Prior to the Authority Transfer Date, the Declarant shall establish the amount and payment terms of Assessments. The Regular Assessments, including management fees and contributions towards the replacement reserve fund, shall not exceed Two Hundred Fifty Dollars (\$250.00) per lot per year in the first year after this Declaration is filed, with increases of not more than ten percent (10%) per year (cumulatively) thereafter.

**SECTION 5.4 Declarant's Obligation to Pay Assessments.** Prior to the Authority Transfer Date, the Declarant shall not be obligated to pay any management fee, contribution towards the replacement reserve fund for the Corporation, or any assessment of any kind or nature, as further defined in Section 12.3.

**SECTION 5.5 The Architectural Control Committee.** Until thirty days after the Declarant has sold the last Lot in Eagle Creek Manor, the Declarant shall have the right to appoint all members of the Architectural Control Committee. However, the Declarant may elect, from time to time, to transfer authority of the Architectural Control Committee to the owners prior to this time.

**SECTION 5.6 Initial Management.** Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas and to perform all or any portion of the functions of the Corporation until the Authority Transfer Date. Declarant may, at its option, engage the services of a Managing Agent, including a Managing Agent affiliated with Declarant, to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services. Declarant's contract with the managing agent shall be for a term of not more than three years, providing for early cancellation by Declarant without cause and without penalty, with not more than 60 days prior notice.

**SECTION 5.7 Developer and Builder Signs Within the Community.** Notwithstanding any other provision in this Declaration regulating signs, the Declarant, and any builder with written authority from the Declarant, at any time before the sale of the last Lot within the Eagle Creek Manor Community, may place identification, sales promotion and advertising signs in common areas, landscape easements, and on lots or parcels owned by Declarant or by said builders, of such size and quantity as Declarant, in its sole discretion, shall approve.

**SECTION 5.8 Consent of HUD/VA.** Notwithstanding any other provision in this Declaration to the contrary, so long as Class B membership exists, annexation of additional properties, dedication of Common Area, and amendment of the Declaration shall require HUD/VA prior approval. Further, so long as Class B membership exists, the Corporation's By-laws may not be amended without HUD/VA approval.

## ARTICLE 6 OWNERS MEETINGS

**SECTION 6.1 Annual Meeting.** The annual meeting of the Eagle Creek Manor Owners shall be held at such date and time as the Board of Directors shall determine, beginning on the first annual meeting date after the Authority Transfer Date, for the purpose of electing directors, approving the Annual Budget and Regular Assessment, and for the transaction of such other business as may come before the meeting. Prior to the Authority Transfer Date, the Board of Directors shall not be required to hold annual or other meetings with the Owners.

**SECTION 6.2 Special Meetings.** Special meetings of the Owners may be called for any legal purpose by the President or by the Board of Directors, and, after the Authority Transfer Date, shall be called by the President at the request of at least Thirty three percent (33%) of the Owners.

**SECTION 6.3 Place of Meeting.** The Board of Directors shall designate the place of the meeting. The Board may designate that any meeting of Owners take place at any suitable location within five (5) miles of the Community.

**SECTION 6.4 Notice of Meeting.** Written notice, stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or

purposes for which the meeting is called, shall be delivered to each Owner not less than ten (10) days before the date of the meeting, either personally or by mail, by or at the direction of the President. Unless an Owner provides the Secretary of the Corporation with written instructions to the contrary, notice may be sent or delivered to the address of the Lot. Notice contained in a newsletter or other general correspondence to Owners shall meet the notice requirement of this section if it is sent or delivered to each Owner as provided herein.

**SECTION 6.5 Quorum.** Thirty three percent (33%) of the Owners represented in person or by proxy shall constitute a quorum at a meeting of Owners. In the event that a quorum is not present, the meeting may be adjourned to another date and time, with or without further notice, or the meeting may be kept open until a quorum has been attained, as determined by the Board.

**SECTION 6.6 Proxies.** At all meetings of Owners, an Owner may vote in person or by written proxy, executed by the Owner or by a duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. Every proxy shall be specific for an Annual or Special Meeting of Owners, or its adjourned date, unless otherwise provided in the proxy.

**SECTION 6.7 Voting.** Each Lot shall be entitled to one vote upon each matter submitted to a vote at a meeting of Owners.

**SECTION 6.8 No Cumulative Voting.** Cumulative voting shall not be permitted. Each Owner may only cast one vote per Lot for any candidate for any Office, even though multiple positions are open for such Office.

**SECTION 6.9 Voting by Mail-In Ballot.** The Board may determine that one or more issues be voted upon by mail-in ballot, either in conjunction with an Annual or Special Meeting or as a substitute for the holding of a Meeting. In the event that the Board elects to permit mail-in ballots, ballots shall be mailed or delivered to each Owner at least 14 days prior to the deadline for voting and at least one half (½) of all Owners must vote in order for the vote to count. If a one third vote has not been achieved by the deadline, the Board of Directors or persons designated by the Board may contact additional Owners at their choosing until a one third vote has been achieved. However, if a one third vote has been achieved by the deadline, no votes received after the stated deadline may be counted.

**SECTION 6.10 Qualification of Directors.** Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one person at a time and except that the Declarant may have multiple representatives serving on the Board of Directors.

## ARTICLE 7 BOARD OF DIRECTORS

**SECTION 7.1 General Powers.** The business and affairs of the corporation shall be managed by its Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he or she is an Owner as defined herein.

**SECTION 7.2 Number, Tenure and Qualifications.** The initial number of directors of the corporation shall be three (3). The corporation may have not less than three directors and it may up to seven (7) directors. After the Authority Transfer Date, each director shall hold office until the next annual meeting of Owners and until his or her successor shall have been elected and qualified.

**SECTION 7.3 Regular Meetings.** The Board of Directors may provide, by resolution, the time and place for the holding of regular meetings to be held without notice, so long as the first such meeting is with notice, and all directors receive notice of the resolution.

**SECTION 7.4 Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or a majority of the directors. The person calling the special meeting may fix the time for holding such meeting of the Board of Directors, and, unless consented to by all Directors, the special meeting shall be held within five miles of the Eagle Creek Manor Community.

**SECTION 7.5 Notice.** Notice of any special meeting shall be given at least three days in advance by written notice delivered personally, by telegram or by other electronic means, or at least seven days in advance if notice is mailed. The attendance of a director at a meeting shall constitute a waiver of notice, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

**SECTION 7.6 Quorum.** A majority of the number of directors eligible to attend and vote shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

**SECTION 7.7 Manner of Acting.** The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. The written consent of absent directors may be obtained and used to validate actions taken at a meeting where a quorum was not present or where an insufficient vote was obtained.

**SECTION 7.8 Action Without A Meeting.** Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing setting forth the action to be taken shall be signed by at least two thirds of the Directors.

**SECTION 7.9 Term of Office and Vacancy.** Each member of the Board of Directors shall be elected for a term of two years, which terms shall be staggered so that the terms of approximately one half of the members of the Board shall expire annually. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Unless a Director is removed by the Owners under Section 7.10, any vacancy occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board. The Director filling a vacancy shall serve until the next annual meeting of the Owners and until his successor is elected and qualified.

**SECTION 7.10 Removal of Directors.** A Director may be removed with or without cause by a majority vote of the Owners, at a meeting duly called for such purpose. In such case, his successor shall be elected at the same meeting, to serve until the next annual meeting.

**SECTION 7.11 Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, the management, maintenance, repair, upkeep and replacement of the Common Area and the collection and disbursement of the Common Expenses. The Board shall also maintain, through employees, contractors or agents, all landscaping easements throughout the Eagle Creek Manor Community.

**SECTION 7.12 Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish their duties. These powers include, but are not limited to, the power:

- (a) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations (in addition to those set forth in this Declaration) with respect to use, occupancy, operation and enjoyment of the Common Area as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such

additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners;

(b) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Eagle Creek Manor;

(c) to regulate any other properties which are subject to this Declaration; and

(d) to exercise all of the rights and powers of the Association.

**SECTION 7.13 Limitation on Board Action.** The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$5,000.00, which sum shall be increased annually by the increase, if any, in the Consumer Price Index (CPI) or its successor index, without obtaining the prior approval of the Owners, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(b) contracts for expenditures included in the annual budget; and  
(c) expenditures necessary to deal with emergency conditions where the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

**SECTION 7.14 Compensation.** No Director shall receive any compensation for services without the express approval of the Owners. The Managing Agent, if one is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**SECTION 7.15 Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify, hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of actions or contracts by the Board on behalf of the Corporation, unless any such action or contract shall have been made in bad faith, or as the result of willful misconduct or gross negligence.

**SECTION 7.16 Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as to matters in which it shall be adjudged in such action, suit or proceeding that such Director is liable for willful misconduct, bad faith or gross negligence in the performance of his or her duties. The Corporation shall also reimburse any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of willful misconduct, gross negligence or bad faith. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service, unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors.



**SECTION 7.17 Non-Liability of Officers and Committee Members.** The provisions of Sections 7.15 and 7.16 shall also apply to Officers and Committee Members, including, without limitation, members of the Architectural Control Committee.

**SECTION 7.18 Professional Management.** The Board of Directors may, with the approval of the Owners, employ a professional management company or agent to assist it in its responsibilities (herein called the "Managing Agent"). The Managing Agent, if one is employed, shall perform such duties and responsibilities as the Board shall designate. The management agreement shall be for a term of three (3) years or less and shall terminate upon not more than sixty (60) days written notice by either party.

**SECTION 7.19 Bond.** The Board of Directors shall provide blanket fidelity bonds for the Managing Agent, the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to one fourth of the aggregate annual assessments on all Lots) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least thirty (30) days prior written notice to the Board. The expense of any such bonds shall be a Common Expense.

## ARTICLE 8 OFFICERS

**SECTION 8.1 Number.** The officers of the corporation shall be a President, a Secretary and a Treasurer, each of whom shall be elected by the Board of Directors. The corporation may also have one or more Vice Presidents. The President, Vice Presidents, Secretary and Treasurer shall all be members of the Board. Such other officers and assistant officers, who need not be Directors, may be elected or appointed by the Board of Directors.

**SECTION 8.2 Election and Term of Office.** The officers of the corporation shall be elected annually by the Board of Directors, after the Authority Transfer Date, at the first meeting of the Board held after each annual meeting of the Owners. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as conveniently possible. Each officer shall hold office until a successor shall have been duly elected and qualified or until their death, resignation or removal as hereinafter provided.

**SECTION 8.3 Removal.** Any officer or agent may be removed by the Board of Directors whenever, in its judgment, the best interests of the corporation will be served thereby.

**SECTION 8.4 President.** The President shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall supervise and direct all of the business and affairs of the corporation. The President shall, when present, preside at all meetings of the Owners and of the Board of Directors. The President shall, in general, perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

**SECTION 8.5 Vice President.** Vice Presidents of the Corporation shall fulfill such duties as the Board of Directors or the President shall direct.

A Vice President shall not serve in the capacity of the President, other than presiding at a duly called meeting at which the President is absent, unless the President so directs in writing.

**SECTION 8.6 Secretary.** The Secretary shall: (a) keep the minutes of the proceedings of the Owners and of the Board of Directors in the corporate minute book; (b) see that all notices are duly given in accordance with the provisions herein or as required by law; (c) be custodian of the corporate records; (d) keep a register of the post office address of each Owner, as furnished by the Owner and of each Mortgagee, as furnished by the Owner or Mortgagee; and (e) in general, perform all duties incident to the office of Secretary and such other duties as may be assigned by the President or by the Board of Directors.

**SECTION 8.7 Treasurer.** The Treasurer shall: (a) have charge and custody of, and be responsible for, all funds of the corporation; (b) receive and give receipts for monies due and payable to the corporation and deposit all such monies in the name of the corporation in such banks, trust companies or other depositories as shall be selected by the Board of Directors; and (c) in general, perform all of the duties incident to the office of Treasurer and such other duties as are assigned by the President or by the Board of Directors.

**SECTION 8.8 Delegation of Duties.** The duties of the Secretary and the Treasurer and the ministerial functions of any other officer or committee member may be delegated to the Managing Agent of the Association, if any, so long as the responsible officer or committee member is regularly advised of the actions taken and generally supervises the actions taken by the Managing Agent on their behalf.

## ARTICLE 9 CONTRACTS, LOANS, CHECKS AND DEPOSITS

**SECTION 9.1 Contracts.** The Board of Directors may authorize any officer or officers, managing agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

**SECTION 9.2 Loans.** No loans shall be contracted on behalf of the corporation and no indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

**SECTION 9.3 Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

**SECTION 9.4 Deposits.** All funds of the corporation not otherwise employed shall be deposited from time to time, in interest bearing or non-interest bearing accounts, to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select. Funds of the corporation may also be invested in government obligations or other commercial paper rated AAA or its equivalent. Funds deposits or investments shall not be committed for a period of more than one year.

## ARTICLE 10

### TAXES, MAINTENANCE OF COMMON AREAS, MAINTENANCE OF INDIVIDUAL LOTS

**SECTION 10.1 Real Estate Taxes.** Real estate taxes for individual lots are to be separately assessed and taxed to each Lot and paid by the title owner thereof. Any real estate taxes or other assessments which are separately assessed against the Common Area shall be paid by the Corporation and treated as a Common Expense.

**SECTION 10.2 Maintenance, Repairs and Replacements to the Common Areas.** Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

**SECTION 10.3 Maintenance of Individual Lots by the Owner.** Any repairs required to an Owner's lot or residence shall be the Owner's responsibility and the Owner's expense. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition, with an exterior appearance up to the general standards of the Eagle Creek Manor Community, the Corporation may perform any work necessary and charge the Owner thereof for such cost, which shall be immediately due, secured by the Corporation's lien on the Owner's property, and otherwise collectable as an assessment pursuant to Section 12.7 of this Declaration.

Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work permitted herein.

**SECTION 10.4 Damage to or Abuse of Common Areas and other Areas Maintained by the Association.** If, due to the willful, intentional or negligent act or omission of an Owner, or of a member of the Owner's family, or of a guest, tenant, invitee or other occupant or visitor for whom the Owner is legally responsible, damage is caused to Common Areas or to portions of Lots, or land maintained by the Association, or if additional maintenance or repairs are required as a result of such acts, the Owner shall be required to pay for such damage or additional expense. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, secured by the Corporation's lien on the Owner's property, and otherwise collectable as an assessment pursuant to Section 12.7 of this Declaration.

**SECTION 10.5 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within Eagle Creek Manor designed to make the community safer than it otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within Eagle Creek Manor, however, and neither the Association, the Declarant, nor any Successor Declarant shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and Occupants of any Lot, and tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association and its Board of Directors, Declarant, or any Successor Declarant and the Committee do not represent or warrant that any security system will be installed or that any security system which is implemented or installed by the Declarant or the Board will be effective in any or all situations. All Owners and Occupants of any Lot, and tenants, guests and invitees of any Owner hereby release the Declarant and the Board from any liability for security efforts or for failure to implement security in the Community.

**ARTICLE 11**  
**ARCHITECTURAL DESIGN AND CONTROL**

**SECTION 11.1 Purpose.** The Architectural Control Committee (also referred to herein as the "Committee") shall regulate the external design, appearance, use and location of improvements on the Real Estate in such manner as to preserve and enhance values and to achieve and maintain a harmonious relationship of architectural design, structural improvements, landscaping, and the natural vegetation and topography.

**SECTION 11.2 Architectural Control Guidelines.** The Board of Directors shall have the authority to establish, amend and revoke Architectural Control Guidelines for the Community and the Association, which shall be binding upon all Owners and all others who in any way use, occupy or benefit from the Community, or any part thereof. The Architectural Control Guidelines shall not be inconsistent with any covenant in this Declaration and shall not be retroactively applied. The Architectural Control Guidelines may be enforced by the Architectural Control Committee or by the Board of Directors.

The Architectural Guidelines shall be established and amended by the Declarant, in its sole discretion, prior to the Authority Transfer Date. After the Authority Transfer Date, any amendments to the Architectural Guidelines shall be approved by a two thirds majority vote of the Owners to be affected thereby at any meeting at which a quorum of such owners is present or by mail in vote, as provided in Article 6 hereof. All owners shall receive notice of any proposed amendment to the Architectural Guidelines at least fourteen (14) days prior to any vote thereon and shall receive notice of passage of any amendment within a reasonable time after its enactment.

**SECTION 11.3 Architectural Design and Environmental Control.** No structure or improvement -- including but not limited to initial home construction, accessory structures, landscaping, fences, walls, mounds, ponds, pools, satellite dishes, antenna, patios, basketball goals and other structures for sports and recreation -- shall be erected, placed or altered on any Lot in this Community until the building plans, specifications and plot plan showing the location, materials, and appearance of the planned improvement, including the exterior colors, have been submitted to and approved by the Architectural Control Committee, regarding conformity and harmony of external design, topography, and finished ground elevations.

The destruction of trees and vegetation and any other such matter as may affect the environment and ecology of this Community must also be approved in advance by the Committee. Excluded from the architectural approval requirement shall be items of landscape maintenance such as pruning of trees and removal of dead trees and limbs by any person or entity having responsibility for such maintenance.

**SECTION 11.4 Composition of the Committee.** The Architectural Control Committee shall consist of at least three members. All members of the Committee, including replacement members, will be appointed by and will serve at the will of the Declarant, until the first to occur of the following:

- (a) Thirty days after the Developer has approved the construction plans for the last Lot in Eagle Creek Manor; or
- (b) Thirty days after Declarant notifies the Owners of its intention to transfer authority for Architectural Control to the Owners.

Within thirty days after the Declarant provides notice to the Owners to appoint Directors and take over control of the Committee, the Board of Directors of the Eagle Creek Manor Homeowners Association, Inc. shall appoint three or more Owners to serve on the Committee.

UNTIL SUCH TIME, THE DECLARANT SHALL HAVE COMPLETE AUTHORITY AND CONTROL OVER ARCHITECTURAL AND ENVIRONMENTAL DESIGN. During the time that the Declarant has Architectural Control, a majority of the Committee members may designate one or more representatives to evaluate and approve specific

applications, so that the Committee is not required to meet to review each application.

**SECTION 11.5 Written Approval.** The Committee's approval or disapproval of any properly submitted application shall be in writing. In the event that a written response is not sent by the Committee within thirty (30) days from the date of submission of a completed application and any additional documentation requested by the Committee, and so long as the request is not prohibited by this Declaration or by the Architectural Control Guidelines then in effect, it shall be deemed that the Committee has approved the presented plan.

**SECTION 11.6 Additional Approvals.** Under no circumstances shall approval of the Architectural Control Committee be deemed to replace any required governmental approval or be deemed to constitute a representation or assurance by the Committee that the planned structure or improvement meets the requirements of any law, regulation or ordinance or meets any structural or safety requirement or standard.

**SECTION 11.7 Alterations Without Approval.** The Architectural Control Committee and/or the Board of Directors shall have the right and authority to require the removal of any improvement which has been made without receiving the approval of the Committee or which is substantially different in appearance, size, color, materials, location or otherwise, from what was approved by the Committee, including injunctive relief, and recovery of costs of removal, damages, reasonable attorney fees, and costs.

**SECTION 11.8 Exercise of Discretion.** Declarant intends that the members of the Architectural Control Committee exercise discretion in the performance of their duties consistent with the provisions of this Article, and every Owner, by the purchase of a Lot, shall be conclusively presumed to have consented to the exercise of discretion by such members. In a judicial proceeding challenging a determination by the Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Control Committee is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse in discretion.

**SECTION 11.9. Swimming Pools, Hot Tubs and Other Structures.** No above ground swimming pools shall be erected, constructed or installed on any Lot. Below ground pools, hot tubs, spas, jacuzzis or similar water recreational facilities may be installed with prior approval of the Architectural Control Committee. The Committee may consider lot size and available room on the lot for such facilities as one of its considerations. The Committee may impose a fencing requirement for such facilities which is greater than what is required by governmental entities.

Any attached garage, tool shed, storage building or any other attached building erected or used as an accessory to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

Detached garages, tool sheds or minibarns may not be erected on any Lot. Other detached structures, including enclosures for approved swimming pools, hot tubs or spas and enclosures for pets, shall be limited (or prohibited) as determined by the Committee, and plans shall be submitted to the Committee for approval prior to construction. The Design Guidelines may contain additional provisions relating to such structures.

**SECTION 11.10 Television Antenna and Satellite Dishes.** No satellite receiving dish greater than one meter in diameter shall be erected or installed on any Lot. No antenna shall exceed twelve (12) feet above roof peak. If an acceptable quality signal can be achieved with a single satellite dish and/or a single antenna, no lot shall have more than one satellite dish and one antenna without the prior approval of the Architectural Control Committee. To the extent that acceptable reception may be obtained, any

satellite dish or antenna shall be attached to the house and installed on the back of the house. The Design Guidelines may impose requirements (which do not impair reception) for painting or screening of satellite dishes and antenna, location, and other restrictions on antenna and satellite dishes.

**SECTION 11.11 Miscellaneous Provisions.**

A. An application for approval shall contain an estimated starting date and a completion date for the improvements, and the Committee's approval may be conditioned upon compliance with such deadlines.

B. The Committee's approval of, or failure to object to, a requested improvement for one Lot shall not prevent it from objecting to a similar improvement for another Lot in the Community, if it deems, in its sole discretion, that the requested improvement would be detrimental to the Community or the other Owners.

C. Neither the members of the Committee nor their designated representatives will be entitled to any compensation for services performed on behalf of the Committee.

D. Members of the Architectural Control Committee have the right to inspect work being performed (at reasonable times with reasonable advanced notice) to insure compliance with these Restrictions and applicable regulations.

E. After the Declarant has transferred authority for all Architectural Control to the Owners, the following provisions shall also apply:

1. A decision of the Architectural Review Committee may be appealed, within thirty days of the date of the decision, to the Board of Directors by the Applicant or by an adjoining Owner, which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

2. Members of the Architectural Control Committee shall be appointed to serve a two year term and may serve no more than two consecutive terms.

3. Any member of the Architectural Control Committee may be removed by the Board of Directors with or without cause by a majority vote at a meeting duly called for such purpose.

**SECTION 11.12 Additional Covenants.**

A. Each residence shall have a single mailbox, standardized in size, appearance and color, with the mailboxes for two residences sharing a single pole, according to the Design Guidelines, and maintained in good condition at all times by the Homeowner. Initial purchase and installation shall be provided by the builder, and subsequent maintenance and replacement, as needed, shall be the obligation of each Owner.

B. Each residence shall have at least one coach light attached and hard wired to the garage and/or the front entry of the house which is illuminated by a photo cell, as set forth in the Design Guidelines, which shall be maintained in good working condition by the Owner.

C. The builder will plant one tree per lot between the curb and the sidewalk. The Owner will be responsible for maintenance of this tree after planting.

D. Except as may be specifically approved by the Architectural Control Committee, window air conditioning units are not permitted.

E. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Control Committee.

F. No fuel storage tanks shall be permitted, except during the initial construction of any home, and then only with the express written consent of the Developer.

G. Sump pumps and other drains serving individual residences or lots (except gutters and ground level drains) shall not outfall or empty onto grass

swales between lots, but only into major drainage swales or storm structures included in the storm drainage system for the Community.

H. The discharge of firearms within Eagle Creek Manor, except for the protection of an individual from personal attack or injury, is prohibited. The term "firearms" includes rifles, pistols, "B-B" guns, pellet guns, bows and arrows, slingshots, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein, the Association shall not be obligated to take action to enforce this Section.

## ARTICLE 12 ASSESSMENTS

**SECTION 12.1 Annual Accounting.** A financial statement and annual report of the Corporation shall be prepared annually, after the close of each fiscal year and prior to the date of the next annual meeting, which shall show all income and receipts and all expenses incurred and paid during the preceding fiscal year. This financial statement and annual report shall be in the form of a compilation, prepared either by, or under the direction of the Treasurer of the Board, and distributed to each Owner prior to the next Annual Meeting. Any Owner or group of Owners shall, at their sole expense, be entitled to an audited accounting by a certified public accountant agreeable to both the Owner and to the Association, by paying the Association for the cost of the audit (as estimated by the accountant and including a reasonable fee for the association's professional manager if one is employed) in advance of the start of the audit.

**SECTION 12.2 Proposed Annual Budget After the Authority Transfer Date.** The Board of Directors shall submit a proposed Annual Budget and Regular Assessment, estimating the total amount of the Common Expenses for the upcoming fiscal year, to each Owner in conjunction with the Association's annual meeting. Once an Annual Budget is adopted, it shall be the basis for the Regular Assessment for the upcoming fiscal year.

The Annual Budget may include an amount for the Replacement Reserve Fund for capital expenditures, and replacement and repair of the Common Areas.

An Annual Budget and Regular Assessment shall be approved and adopted at each Annual Meeting of the Owners. If the Owners have not approved an annual budget, whether or not due to failure or delay of the Board of Directors, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon up to one hundred and twenty five percent (125%) of such last approved budget, as a temporary budget.

The Annual Budget, the Regular Assessments, and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

**SECTION 12.3 Proposed Annual Budget Prior to the Authority Transfer Date.** Prior to the Authority Transfer Date, the Declarant shall establish the amount and payment terms of Assessments based upon the same items of expense and considerations as provided in Section 12.2 above, without the prior approval of the Owners. The Regular Assessments, including management fees and contributions towards the replacement reserve fund, shall not exceed Two Hundred Fifty Dollars (\$250.00) per lot for the first year after this Declaration is filed, with increases of not more than ten percent (10%) per year (cumulatively) thereafter.

Prior to the Authority Transfer Date, the Declarant shall not be obligated to pay any management fee or contribution towards the replacement reserve fund for the Corporation, or any assessment of any kind or nature, however the Declarant will cover any shortfall in the Annual Budget for entryway maintenance, lawn care, landscaping, utilities, snow removal (if included in the budget), security, lake maintenance, common area maintenance,

and legal, accounting and management fees. Shortfall shall not be considered by category, rather it shall be considered only in the totality of the annual budget.

Prior to the Authority Transfer Date, home builders authorized by the Declarant will not be required to pay any assessments to the Association. The annual budget for the Association will be divided between the lots which have been deeded to an owner (other than a builder), with a projection for lots which will be transferred during the coming year.

Prior to the Authority Transfer Date, neither the Declarant nor the Association shall be required to send a financial statement and annual report of the Corporation to each Owner, however the records of the Corporation shall be available for review by Owners during regular business hours, upon reasonable advanced notice.

**SECTION 12.4 Regular Assessments.** The Annual Budget shall contain a proposed Regular Assessment against each Lot, which shall be the same amount for each Lot. Following the adoption of the Annual Budget, each Owner shall be given written notice of the assessment (herein called the "Regular Assessment").

In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, following adoption of the final Annual Budget by the Owners which results in a different Regular Assessment, a revised statement shall be sent to each Owner indicating the additional amount owed or the credit for the next Regular Assessment.

The Regular Assessment against each Lot shall be paid to the Association in advance, in annual installments, or as otherwise determined by the Board. The Board may (but shall not be required to) allow payment of assessments monthly, quarterly, or semi-annually, in advance, including an additional fee covering the additional administrative expense. If installment payments are permitted, any default in paying an installment shall accelerate the balance owed for such year.

The Regular Assessment for the current fiscal year shall become a lien on each Lot as of the first day of the Corporation's fiscal year, even though based upon a Temporary Budget. If an Owner has paid an assessment based upon a Temporary Budget, and conveys or transfers his Lot before the Annual Budget and Regular Assessment are determined, both the Owner and the successor Owner shall be jointly and severally liable for any balance owed for the Regular Assessment.

**SECTION 12.5 Special Assessments.** Special Assessments may become necessary as a result of Common Expenses of an unusual or extraordinary nature or which were not otherwise anticipated, the failure of Owners to pay Regular Assessments, or for other reasons.

The Board of Directors, with approval of the Owners at any Regular or Special Meeting of the Owners or by mail-in ballot, shall have the right, power and authority to impose special assessments upon each Lot in equal shares (herein called "Special Assessment"), which shall become a lien on each Lot.

**SECTION 12.6 Reserve.** As a part of any Regular or Special Assessment, the Association may collect funds for a reserve for future expenses. These reserves may be collected for reasonably anticipated expenses plus a reasonable amount may be collected for unanticipated expenses.

**SECTION 12.7 Failure of Owner to Pay Assessments.** Each Owner shall be personally liable for the payment of all Regular and Special Assessments. If any Owner shall fail, refuse or neglect to pay any Regular Assessment or Special Assessment when due, a late charge of twenty percent (20%) of the unpaid assessment amount or seventy five dollars (\$75.00), whichever is greater, shall be added to the balance owed, plus interest of one and three fourths percent (1 3/4%) per month beginning thirty (30) days after the date due, and the following additional provisions shall apply:



(a) A lien for any and all unpaid assessments on the Owner's Lot may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law;

(b) The Board may bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same;

(c) The Association may recover costs of collection (including fees charged by the managing agent) and attorney fees in addition to any other amounts due;

(d) Where the Owner constitutes more than one person, the liability of such persons shall be joint and several;

(e) The Owner, the lessee of any residence, and any adult occupant of a residence shall be jointly and severally liable for the payment;

(f) The balance of installments for the current fiscal year shall become immediately due; and

(g) The Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect any rentals for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments.

**SECTION 12.8 Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (prorated to the date of sale or transfer). No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof nor relieve the owner from personal liability for any prior assessments.

### ARTICLE 13 MORTGAGES

**SECTION 13.1 Notice to Corporation.** Any Mortgagee who places a first mortgage lien upon an Owner's Lot, or the Lot Owner, may notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and its address shall be maintained by the Secretary. Any notice required to be given to the Mortgagee pursuant to the terms of this Declaration shall be deemed effectively given if mailed to such Mortgagee at such address. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise. The Association may charge an additional assessment to any Owner whose Mortgagee requests notice, to cover the administrative costs of providing notices to the Mortgagee.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligation of such borrower under this Declaration which is not cured within sixty (60) days.

**SECTION 13.2 Notice of Unpaid Assessments.** The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has

a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Article 11 hereof.

**SECTION 13.3 Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums.** Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and, (2) to pay any overdue premiums on hazard insurance for the Association or to secure new hazard insurance for the Association on the lapse of a policy. Any Mortgagee making such payment shall be immediately owed reimbursement by the Corporation.

**SECTION 13.4 Notice of Condemnation or Casualty Loss.** Mortgagees shall be timely notified of any condemnation loss which affects a material portion of the Eagle Creek Manor Community or any Lot upon which the Mortgagee has an interest. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

**SECTION 13.5 Notice to Insurers and Guarantors.** Any guarantor of a first mortgage or any insurer of a first mortgage shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

**SECTION 13.6 Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

## ARTICLE 14 INSURANCE

**SECTION 14.1 Casualty Insurance.** The Corporation shall purchase a casualty insurance policy affording fire and extended coverage, insuring the Corporation's improvements within the Common Areas and Easements for the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts, they shall also obtain "all risk" coverage. Such policy shall (to the extent obtainable) contain provisions that the insurer waives its right to subrogation against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests.

Each Owner shall otherwise be solely responsible for loss or damage to his Lot, the improvements on his Lot, the contents of his residence, however caused, and his personal property stored elsewhere on the Real Estate. The Corporation shall have no liability to any Owner for loss or damage to a Lot, the improvements on a Lot, its contents, or an Owner's personal property stored elsewhere within the Community. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. In no event will the Eagle Creek Manor Homeowners Association or the Declarant maintain insurance on any privately owned residence or structure and neither the Association nor the Declarant shall have any liability to any Owner for loss or damage to a Lot, any improvement on a Lot, or the contents of any residence, building, or other personal property of any Owner.

**SECTION 14.2 Public Liability Insurance.** The Corporation shall also purchase a comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time,

but not less than One Million Dollars (\$1,000,000), arising out of a single occurrence, for bodily injury or death and for property damage. Such policy shall cover the Corporation, the Board of Directors, any committee or division of the Corporation or Board, any Managing Agent, and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Community. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

**SECTION 14.3 Other Insurance.** The Corporation shall obtain any other insurance required by law and may purchase such other insurance as the Board of Directors from time to time deems necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation.

**SECTION 14.4 General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. If available, the policies shall contain an endorsement that it shall not be terminated or substantially modified without at least ten days prior written notice to Mortgagees and to the Corporation. Written notice of any insurance obtained by the Corporation and of any subsequent changes or termination thereof shall be promptly furnished by the Board to each Owner or mortgagee whose interest may be affected thereby. Except as otherwise provided in this Article, notice required under this section shall be sufficient if it is published as a part of a general newsletter and mailed or delivered within sixty days.

## ARTICLE 15 LOSS TO COMMON AREAS

**SECTION 15.1 Restoration of Common Area.** In the event of damage to or destruction of any portion of the Common Area or easements due to casualty or disaster, the Corporation shall, except as otherwise provided in this Section, promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction, and the balance shall be paid first from the reserve account and second, as a Common Expense.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture. However, the Board may elect to improve or update the improvements or damaged area, within its discretion, so long as there are sufficient insurance proceeds, funds in reserve accounts, or the provisions of Section 7.13 are complied with.

The Board of Directors may elect not to repair or reconstruct the Common Area and may apply the proceeds of insurance to other purposes consistent with this Declaration and with the Articles of Incorporation of the Association where the Board of Directors determines that the common areas or improvements which have been damaged or destroyed are not used and useful to the Community or to the portions of the Community for which such common areas or improvements were intended to serve, or where the common areas or improvements which have been damaged or destroyed can not be economically restored with the funds available both from the insurance proceeds and from other funds reasonably available to the Association for such purpose.

**ARTICLE 16**  
**COVENANTS AND RESTRICTIONS**

**SECTION 16.1** The following covenants and restrictions on the use and enjoyment of the Lots and Common Area shall be in addition to any other covenants or restrictions contained herein, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. The Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall be entitled to damages and reasonable attorney fees resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation.

These covenants and restrictions are as follows:

A. All Lots shall be used exclusively for residential purposes and for occupancy by a single family.

B. No Owner shall permit anything to be done or kept in his home or on his Lot or on any of the Common Area which will result in a cancellation of insurance or increase in insurance to the Association or to any other Owner, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

C. No nuisance shall be permitted on any Lot or elsewhere in the Community. Without limiting the scope of the term "nuisance", it shall include anything which endangers life or health, or obstructs the reasonable, comfortable and peaceful use of property, or its value, as well as that which gives offense to the senses or violates the laws of decency. The Board of Directors' determination as to what specific circumstances constitute a nuisance shall be conclusive.

D. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his residence or placed on the outside walls of any building, and no awning, canopy, shutter or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Committee.

E. No "for sale", "for rent", "garage sale" or other signs for any purpose shall be placed upon any common area or upon any Lot other than the Lot which is for sale, for rent or upon which the garage sale will be held, without the express consent of the Board. Any yard sign, whether placed on any lot or with the Board's consent placed in the common areas, shall be limited in size to what is commonly used in the residential real estate Community, as determined by rules established by the Board. No more than one sign may be placed on any Lot, without the prior consent of the Board. No banners or signs shall be hung from any home or elsewhere on any Lot for more than one week, without the prior consent of the Board.

F. No animals, livestock or poultry of any kind shall be raised, bred or kept in any house or on any Lot or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a residence, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner, and the Association shall not be liable for any injury or damage to persons or property, including the Common Area, caused by any pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time, including, without limitation, a restriction on the number of pets, the prohibition of particular species or breeds, and the prohibition of pets in particular areas of the Community. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Community within ten (10) days after written notice from the Board.

G. The Lots and the Common Area shall be kept free and clear of rubbish, debris and other unsightly materials. No Owner or guest of an Owner, nor any builder, contractor or subcontractor, shall litter or dispose of trash improperly anywhere within the Community.

H. No house or Lot or any portion of the Common Area shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Community, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants. Without limiting the generality of the foregoing, this Covenant shall include excessive noise from the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment, machines or vehicles, loud voices, excessive amounts of light, vibration, or unpleasant odors.

I. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any street or any part of the Common Areas or from neighboring properties.

J. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except with the prior approval of the Board. The Board may establish rules generally permitting such sales, or permitting such sales on a limited basis.

K. No well shall be drilled on any Lot, without the prior approval of the Board, nor shall a septic tank or other sewage disposal system be installed on any Lot, without the approval of the Board and of the governing public health agency or other civil authority.

L. No person shall draw water or other materials from the lakes or other water retention ponds or add water (except for storm water drainage approved by the Declarant or by the Committee) or other materials, whether by dumping or otherwise, to the lakes and other water retention ponds without the prior approval of the Board as to quality and quantity of materials.

M. There shall be no docks on the lakes and no boating, fishing or swimming.

N. The Board may prohibit or limit parking on the streets within the Eagle Creek Manor Community.

O. No industry, trade, or other commercial or religious activity, educational or otherwise, whether or not designed for profit, shall be conducted or permitted upon any Lot or elsewhere within the Community, except within such rules and regulations as are established by the Board, and except that an Owner or resident may conduct business activities within a residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside on the Real Estate or involve door-to-door solicitation of residents of the Real Estate; and (d) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

P. No Lot may be used for growing crops, except private gardens within the size and location guidelines established by the Board. The Board shall have the right and authority to prohibit vegetable gardens entirely.

Q. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

R. The Common Areas shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

8. No Owner may rent or lease his house for transient or hotel purposes or for any purpose for a period of less than six months without the prior approval of the Board. Any Owner who leases a residence shall lease the entire house and shall have a written lease which shall provide that the lease is subject to the provisions of this Declaration and any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease.

**SECTION 16.2 Fines for Violation of Covenants.** The Board of Directors may assess a fine or penalty, not exceeding fifty dollars (\$50) per incident, against any Owner violating the Covenants and Restrictions in this Declaration or any rule established by the Board. A continuing violation may be assessed an additional fine, not exceeding fifty dollars each week until corrected, at the discretion of the Board. Any such fine will be considered to be a special assessment against the Owner and the Owner's Lot, and collectable as provided in Section 12.7.

## ARTICLE 17 AMENDMENT OF DECLARATION

**SECTION 17.1 General Amendments.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

A. **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

B. **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by Owners having in the aggregate at least one third of the votes of all Owners.

C. **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws herein.

D. **Adoption.** Any proposed amendment to Articles 6, 7, 8, 9 and 16 of this Declaration (the By-Laws) must be approved by a vote of not less than fifty percent (50%) in the aggregate of the votes of all Owners. Any proposed amendment to any other portion of this Declaration must be approved by a vote of not less than seventy percent (70%) in the aggregate of the votes of all Owners. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner, if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

**SECTION 17.2 Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots, (c) to bring this Declaration into compliance with any statutory requirements, or (d) to correct clerical errors or ambiguities in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby

reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

**SECTION 17.3 Amendment Prior to the Applicable Date.** Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the Applicable Date without the consent and approval of Declarant.

**SECTION 17.4 Recording.** Each amendment to the Declaration shall be executed by any two officers of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana and such amendment shall not become effective until so recorded.

## ARTICLE 18 MISCELLANEOUS PROVISIONS

**SECTION 18.1 Limitation on Time to Rebuild.** In the event of any loss to a residence or accessory structure within this Community, unless the Owner obtains approval from the Architectural Control Committee for an extension of time or permission not to rebuild, the Owner shall begin to rebuild within four months of the loss and shall complete the rebuilding within nine months of the loss.

Failure to honor this condition shall establish an Option to Purchase said Lot and improvements thereon for cash at fair market value as hereinafter detailed exercisable by written notice from the Declarant to the owners of said Lot within sixty (60) days of expiration of the initial or extended period.

Fair market value shall be agreed upon within ten (10) days of the Lot owner's receipt of the above written notice. If agreement is not reached within such time, the Lot Owner and the Declarant agree to submit the question of fair market value to a professional appraiser and be bound by same.

Each party shall select an appraiser and the two appraisers shall select a third, and this third appraiser shall proceed to determine the value of the lot and improvements. Both parties agree to name their respective appraiser within fifteen (15) days of the date of the aforesaid written notice. If a party fails to name an appraiser within such time, their right to appoint an appraiser shall be waived.

The appraisal shall be made within twenty-five (25) days of the date of the aforesaid written notice, and the appraiser shall make his report in writing and furnish a copy thereof to each of the parties within five (5) days thereafter. The appraiser shall consider, in making his or her appraisal, the cost of completing construction of the improvements to their condition prior to the loss, and the ordinary and usual costs of sale. Each party shall pay one-half of the cost of this appraisal and each party shall be conclusively bound by the appraisers' determination.

**SECTION 18.2 Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of any Lot shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement

that such provisions are accepted and agreed to by such Owner, tenant or occupant. All such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest in a Lot or any portion of the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons or other legal entities who may occupy, use, enjoy or control a Lot or any part of the Real Estate shall be subject to the Declaration, the Articles of Incorporation, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

**SECTION 18.3 Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or of the Common Area.

**SECTION 18.4 Costs and Attorney's Fees.** In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorney's fees incurred in connection with such default or failure.

**SECTION 18.5 Non-Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses, whether by Regular Assessment or by Special Assessment, by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.


**SECTION 18.6 Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles of Incorporation, or the Rules and Regulations adopted by the Board, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles of Incorporation, or the Rules and Regulations, and each shall be enforced to the greatest extent permitted by law.

**SECTION 18.7 Resolution of Disputes.** Any dispute arising hereunder regarding the allocation of the budget requirements or assessments among owners or the by-laws and operation of the Association shall first be submitted, under the Indiana Rules for Alternative Dispute Resolution, for mediation and if mediation is not successful within thirty days of the request of any party for mediation, then the dispute shall be submitted for binding arbitration. A mediator or arbitrator agreeable to the parties does not have to be an attorney.

**SECTION 18.8 Interpretation.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. The singular shall include and refer to the plural and vice versa as appropriate. The captions and titles of the various articles and sections of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

IN WITNESS WHEREOF, the undersigned, as the Developer of the above described real estate has hereunto executed this Declaration this 10<sup>th</sup> day of May, 2000.

M/I Schottenstein Homes, Inc.

  
Cliff White, Division President



STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, personally appeared Cliff White, Division President of M/I Schottenstein Homes, Inc., Declarant and acknowledged the execution of this Declaration this 10<sup>th</sup> day of May, 2000.

Cassie Braughton  
Notary Public

Cassie Braughton

Printed Name

My commission expires: 7/11/2007

My county of residence: Marion



Cassie Braughton  
Notary Public, State of Indiana  
My Commission Expires 7/11/2007  
County of Residence: Marion

This Instrument was prepared by William T. Rosenbaum, Attorney at Law, 1901 Broad Ripple Avenue, Indianapolis, Indiana 46220 (317) 259-6600

May 9, 2000

Land Description

Part of the Southwest Quarter of the Southwest Quarter of Section 35, Township 17 North, Range 2 East, more particularly described as follows:

Beginning at the Northeast Corner of the said Quarter-Quarter Section; thence along the North line thereof, South 88 degrees 45 minutes 00 seconds West (assumed bearing) 1330.04 feet to the Northwest corner of said Quarter-Quarter Section; thence along the West line thereof, South 00 degrees 00 minutes 00 seconds West 244.52 feet to the Northwest corner of land described in a Warranty Deed from Patricia A. Dodson to Rebecca L. Davis recorded as instrument 910029377 in the Office of the Recorder of Marion County, Indiana ( the next two courses are along the North and East lines of said Davis tract); (1) thence parallel with the North line of said Quarter-Quarter Section, North 88 degrees 45 minutes 00 seconds East 175.00 feet; (2) thence parallel with the West line of said Quarter-Quarter Section, South 00 degrees 00 minutes 00 seconds West 76.49 feet to the Northwest corner of a 0.132 acre tract described in an Executor's Deed from Charles Billups, Executor of the Estate of Lillia Amanda Murphy, to Charles Billups recorded as Instrument 920112683 in said Recorder's Office ( the next two courses are along the North and East lines of said Billups tract); (1) thence South 88 degrees 51 minutes 21 seconds East 354.98 feet; (2) thence parallel with the West line of said Quarter-Quarter Section, South 00 degrees 00 minutes 00 seconds West 8.68 feet to the Southeast corner of said Billups tract; thence parallel with the North line of said Quarter-Quarter Section, North 88 degrees 45 minutes 00 seconds East 800.18 feet to the East line of said Quarter-Quarter Section; thence along said East line, North 00 degrees 01 minute 22 seconds West 344.52 feet to the Point of Beginning containing 9.985 acres more or less.

Subject to the rights of way, easements and restrictions of record.



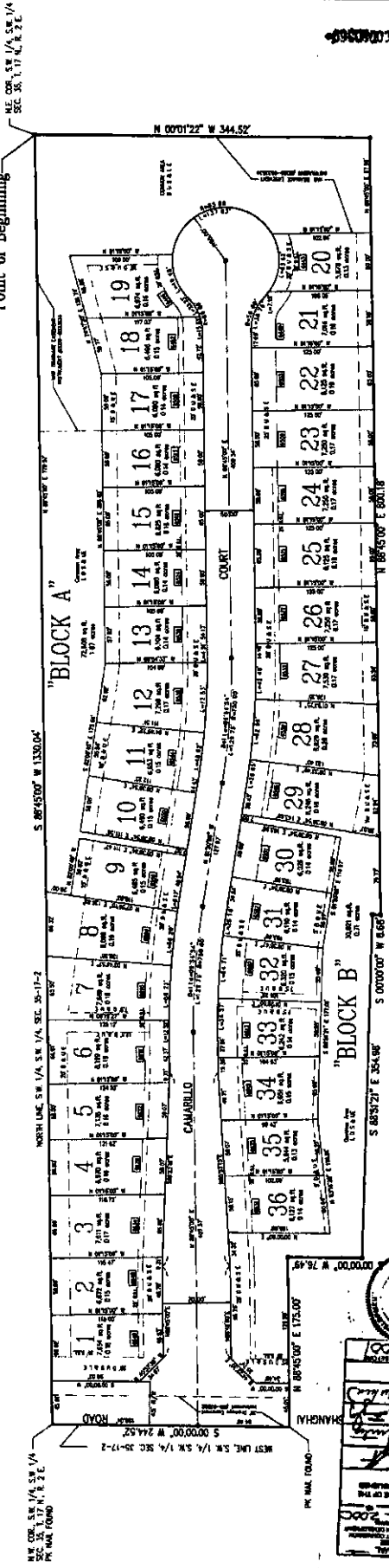
# SECONDARY PLAT FOR EAGLE CREEK MANOR

Part of the Southwest Quarter of Section 35, Township 17 North, Range 2 East of the Second Principal Meridian, Pike Township, Marion County, Indiana

00AN-50569

325658 MAY 21 8  
MARION COUNTY, INDIANA

Point of Beginning



**DAMAGE AND FLOOD CONTROL:** It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply with all laws and ordinances of the State of Indiana and the City of Indianapolis and the requirements of all damage permits for this plat issued by the Department.

**SMART SERIES:** It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply with all laws and ordinances of the State of Indiana and the City of Indianapolis and the requirements of all damage permits for this plat issued by the Department.

**Other lot(s) shall be the responsibility of the owner of the same to comply with all laws and ordinances of the State of Indiana and the City of Indianapolis and the requirements of all damage permits for this plat issued by the Department.**

**VIEW OBSTRUCTION:** No fence, wall, hedge, or other building which obstructs light over a distance between 2 and 9 feet from the center of the lot shall be erected on any lot within the area of this plat. The owner of any lot within the area of this plat shall be responsible for the removal of any such obstruction within 30 days of the date of the plat. The owner of any lot within the area of this plat shall be responsible for the removal of any such obstruction within 30 days of the date of the plat.

**METROPOLITAN DEVELOPMENT COMMISSION:** The Metropolitan Development Commission, its successors and assigns, shall have the right to inspect and copy any plat, map, or other document submitted to it for its review and approval. The Metropolitan Development Commission shall have the right to require the owner of any lot within the area of this plat to provide such information as it may deem necessary to carry out its duties. The Metropolitan Development Commission shall have the right to require the owner of any lot within the area of this plat to provide such information as it may deem necessary to carry out its duties.

The undersigned, owner(s) of the above described real estate, do hereby certify that the plat and map and the same have been prepared in accordance with the laws and ordinances of the State of Indiana and the City of Indianapolis and the requirements of all damage permits for this plat issued by the Department. The undersigned, owner(s) of the above described real estate, do hereby certify that the plat and map and the same have been prepared in accordance with the laws and ordinances of the State of Indiana and the City of Indianapolis and the requirements of all damage permits for this plat issued by the Department.

**SEAL**

**SEAL**

**Legend**

- 59 Lot Number
- Area in Square Feet and Acres
- Address
- Building Setback Line
- Drainage and Utility Easement
- Lot Area
- Lot Area
- Lot Area
- Street Right of Way
- Street Right of Way
- Indicates Ordinance Information

**APPROVED THIS 20 DAY OF MAY 2000**

**SEAL**

**SEAL**

99-P-70

**falcon**  
ENGINEERING, INC.  
1001 S. State St., Suite 201, Fort Wayne, IN 46802  
Phone: (317) 233-1100 Fax: (317) 233-1101

**Current Zoning: D-3-C**

**Building Set Back Requirements**

Minimum Front Yard: 25 feet, 20 feet on out-of-lot

Minimum Rear Yard: 20 feet lots 1 through 8, 30 through 35

15 feet lots 9 through 18, 30 through 35

Minimum Side Yard: Aggregate of 10 feet Between Driveways

THIS INSTRUMENT PREPARED BY JEFFREY A. DOUGLASS, PROFESSIONAL LAND SURVEYOR 070000

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